

INTERGOVERNMENTAL AGREEMENT

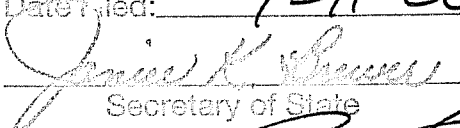
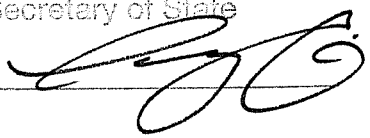
BETWEEN
THE STATE OF ARIZONA
AND
CITY OF SHOW LOW

THIS AGREEMENT is entered into this date January 11, 2006, pursuant to the Arizona Revised Statutes § 11-951 through § 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF SHOW LOW, acting by and through its MAYOR and CITY COUNCIL (the "City").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.
2. The City is empowered by Arizona Revised Statutes § 9-240 and § 11-952 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.
3. Congress has authorized appropriations for, but not limited to, the twelve eligible transportation enhancement provisions.
4. The parties hereto agree and acknowledge the following conditions: **a)** The estimated monetary amounts referenced in this Agreement are subject to change and can change substantially before completion of the Project; **b)** The parties shall perform their responsibilities consistent with this Agreement; and **c)** Any change or modification to the Project will only occur with the mutual written consent of the parties.
5. The State and the City desire to participate in the design, construction and maintenance of an 8-foot wide pathway with portions of 5-foot sidewalks located along the north side of State Route (SR) 260, beginning at Old Linden Road and ending at the City Park. The State shall design and construct the pathways and the City shall provide a Temporary Construction Easement (TCE) to the State for that portion of the pathway outside the State's right-of-way in the area where the SR 260 pathway connects to the existing path in the City Park. The City shall provide all maintenance to the pathway, hereinafter referred to as the "Project". The estimated costs are as follows:

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

NO. 27927
Filed with the Secretary of State
Date Filed: 1-11-06

Secretary of State
By: 

Design & Construction TRACS No. H6336 01C

Estimated Federal Aid Funds @ 94.3%	\$442,361.00
Estimated State Funds @ 5.7%	<u>\$ 26,739.00</u>
Total Estimated Design & Construction Costs:	\$469,100.00

II. SCOPE OF WORK

1. The State shall:

a. Not proceed with the below items, until the City has provided the necessary TCE in the vicinity of the City Park.

b. Prepare and provide design plans, specifications and other such documents and services required for construction bidding and construction of the Project, and submit same to the City for comments, as appropriate. The Project will be constructed by the State using State and Federal Funds.

c. Construct the Project approved by FHWA if such funds are available for construction. Be the designated authorized agent with the consent of the City and the FHWA and proceed to advertise for, receive and open bids with the aid and consent of the City and the FHWA. Enter into a contract(s) with a firm(s) to whom the award is made with the concurrence of the FHWA. Enter into a Project Agreement with FHWA on behalf of the City to perform, complete, accept and pay for in accordance with instructions and requirements of the City and the State. Request the maximum Federal Funds available including construction, engineering and administration costs.

d. Upon completion of the Project perform the final inspection and notify the City in writing that the Project has been constructed in accordance with the Project documents and has been satisfactorily completed.

e. Grant the City an "Encroachment Permit" through the Globe District Permits Office, for work inside the State's Control of Access to permit the City to perform all planned maintenance work for the Project.

f. Not be obligated to maintain this Project, should the City fail to budget or provide for proper and perpetual maintenance for the Project as set forth in this Agreement.

2. The City shall:

a. Provide to the State all necessary TCE to the City Park, prior to the advertisement for bids for the Project.

b. Not permit or allow any encroachments, except those authorized by permit, upon or private use of the right-of-way. In the event of any unauthorized encroachment or improper use, the City shall take all necessary steps to remove or prevent any such encroachments or use.

c. Remove from the proposed right-of-way all obstructions in the alignment of the pathway, including but not limited to boulders and trees, including root system, or unauthorized encroachments of whatever nature, either above or below the surface of the Project area and hereby certifies that all obstructions and encroachments have been or will be removed prior to the start of Project construction.

d. Review the design documents required for construction of the Project, and provide comments to the State, as appropriate.

e. Confer with and obtain written consent from the State on Project related contract modifications.

f. Be obligated to incur any expenditure should unforeseen conditions or circumstances increase the cost of said work required by a change in the extent or Scope of Work requested by the City, in this Agreement. The City shall be obligated to incur any such increased cost by the City; any such changes require the prior approval of the State.

g. Participate in the final inspection of the Project and provide pertinent comments to the Engineer.

h. Apply and receive approval for an Encroachment Permit through the Globe District Permits Office for all planned maintenance work for the Project and provide written notification to said Office prior to any future maintenance.

i. Upon satisfactory completion of construction, approve and accept the Project on behalf of the parties hereto, provide for perpetual and proper maintenance and all repairs to the pathways, drainage conveyance elements, including but not limited to cleaning, sweeping, snow and ice removal and routine maintenance of pathways/sidewalks, which would include making repairs, removal and replacement of cracked, damaged and buckled surfaces as required to maintain it in a safe and functional condition.

III. MISCELLANEOUS PROVISIONS

1. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion and reimbursements provided herein. However, any provisions for maintenance of pathways and sidewalks, curbing, and gutters, provided by the City shall be perpetual. This Agreement may be cancelled at any time prior to the award of the Project construction contract, upon thirty-days (30) written notice to either party. It is understood and agreed that, in the event the City terminates this Agreement, the State shall in no way be obligated to maintain said Project.

2. Each party (as "Indemnitor") agrees to indemnify, defend, save and hold harmless the other party as ("Indemnitee") from and against any and all claims, losses liability, costs, or expenses including reasonable attorney's fees, hereinafter collectively referred to as ("claims"), arising out of bodily injury of any person, including death or property damage, but only to the extent that such claims which result in vicarious/derivative liability to the Indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees or volunteers.

3. The cost of construction and construction engineering work covered by this Agreement is to be borne by FHWA and the State, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this Agreement. Therefore, the State agrees to furnish and provide the difference between the total cost of the work provided for in this Agreement and the amount of Federal Aid received.

4. This Agreement shall become effective upon filing with the Secretary of State.

5. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

6. The provisions of Arizona Revised Statutes § 35-214 are applicable to this Agreement.

7. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

8. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail, addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue, Mail Drop 616E
Phoenix, Arizona 85007
(602) 712-7525
(602) 712-7424 Fax

City of Show Low
Attn: City Manager
200 West Cooley
Show Low, Arizona 85901
(928) 532-4000
(928) 532-4009 Fax

9. This Agreement is subject to all applicable provisions of the Americans with Disability Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable Federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

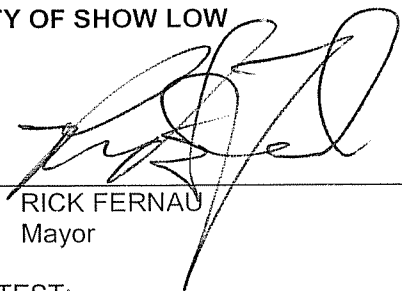
10. Non-Availability of Funds: Every payment obligation of the State and City under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligations. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State and City at the end of the period for which the funds are available. No liability shall accrue to the State or the City in the event this provision is exercised as a result of termination under this paragraph.

11. In accordance with Arizona Revised Statutes § 11-952 (D) attached hereto and incorporated herein is the written determination of each party's legal counsel and that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

CITY OF SHOW LOW

By



RICK FERNAU
Mayor

ATTEST:


By



ANN KURASAKI
Clerk

Approved as to content:

By




Michael D. Maag

STATE OF ARIZONA

Department of Transportation

By




SUSAN TELLEZ
Contract Administrator

ATTORNEY APPROVAL FORM FOR THE CITY OF SHOW LOW

I have reviewed the above referenced Intergovernmental Agreement between the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, and the CITY, an Agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-951 through § 11-954 and declare this Agreement to be in proper form and within the powers and authority granted to the CITY under the laws of the State of Arizona.

No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this 29th day of November, 2005.



City Attorney , K. Kane Graves

CITY OF SHOW LOW RESOLUTION NO. R2005-67

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF SHOW LOW, ARIZONA APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF SHOW LOW AND THE STATE OF ARIZONA, DEPARTMENT OF TRANSPORTATION, TO DESIGN, CONSTRUCT, AND MAINTAIN A MULTI-USE PATH ON SR260 FROM SHOW LOW CITY PARK TO OLD LINDEN ROAD

RECITALS:

WHEREAS, the State of Arizona, Department of Transportation, is empowered by A.R.S. §§ 28-401 and 11-951 through 11-954 to enter into this agreement with the City of Show Low; and

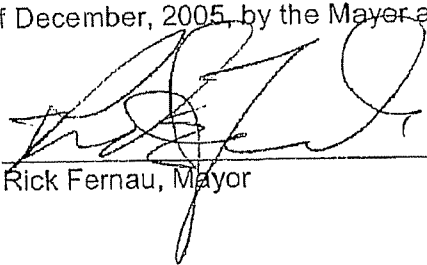
WHEREAS, the City of Show Low is empowered by A.R.S. §§ 9-240 and 11-951 through 11-954 to enter into this agreement with the State of Arizona; and

WHEREAS, the State and the City mutually desire to participate in the design, construction, and maintenance of an eight-foot wide pathway with portions of five-foot sidewalks located along the north side of State Route 260, beginning at Old Linden Road and ending at the City Park; and

ENACTMENTS:

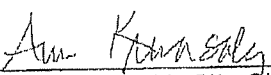
NOW, THEREFORE, BE IT RESOLVED that the Mayor and Council of the City of Show Low, Arizona, hereby approve an Intergovernmental Agreement between the City of Show Low and the State of Arizona, Department of Transportation, for the design, construction, and maintenance of a multi-use path on State Route 260 from Show Low City Park to Old Linden Road.

PASSED AND ADOPTED this 6th day of December, 2005, by the Mayor and Council of the City of Show Low, Arizona.



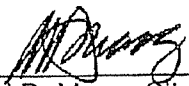
Rick Fernau, Mayor

ATTEST:




Ann Kurasaki, City Clerk

APPROVED AS TO CONTENT:




Michael D. Maag, City Manager

APPROVED AS TO FORM:



K. Kane Graves, City Attorney

<p>TERRY GODDARD Attorney General</p>	<p> OFFICE OF THE ATTORNEY GENERAL STATE OF ARIZONA</p>	<p>CIVIL DIVISION TRANSPORTATION SECTION Writer's Direct Line: 602.542.8855 Facsimile: 602.542.3646 E-mail: Susan Davis@azag.gov</p>
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INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR05-1162TRN (**JPA 05-089**), an Agreement between public agencies, i.e., The State of Arizona and City of Show Low, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: December 27, 2005

TERRY GODDARD
Attorney General



SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

SED:mjf:940276
Attachment